

March 20, 2013

Patricia Forsyth
219 Park View Avenue
Piedmont, CA 94610

Re: Your Request for Advice
Our File No. A-13-036

Dear Ms. Forsyth:

This letter concerns your request for advice regarding the reporting provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented. The Fair Political Practices Commission (“the Commission”) does not act as a finder of fact when it renders assistance (*In re Oglesby* (1975) 1 FPPC Ops. 71), and our advice is based solely on the provisions of the Act. Please note that the Commission does not provide advice relating to past conduct. (Regulation 18329(b)(8)(A).)

QUESTION

In preparing his annual Statement of Economic Interest (SEI), how should San Francisco County Sheriff Ross Mirkarimi report the funds collected by the Ross Mirkarimi Legal Defense Fund and used to pay for his legal defense fees related to the administrative matter that followed his misdemeanor conviction for false imprisonment?

CONCLUSION

The funds raised by the Ross Mirkarimi Legal Defense Fund are considered gifts to him, and he must therefore disclose the source of any gifts aggregating \$50 or more on his annual SEI.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS²

You are the treasurer of the Ross Mirkarimi Legal Defense Fund. You are seeking advice on behalf of Sheriff Mirkarimi because the April 1st deadline to file his annual SEI is quickly approaching and he needs advice with respect to properly reporting the money raised by this legal defense fund.

You stated that the San Francisco District Attorney's Office charged Sheriff Mirkarimi with "misdemeanor domestic violence, child endangerment, and dissuasion of witness on January 12, 2012." These charges related to allegations stemming from an incident that occurred on December 31, 2011, wherein Sheriff Mirkarimi allegedly grabbed his wife's arm during an argument.³ On March 13, 2012, Sheriff Mirkarimi entered into a plea agreement with the District Attorney for a single misdemeanor count of false imprisonment.

On March 14, 2012, San Francisco Mayor Edwin Lee suspended Sheriff Mirkarimi for the misdemeanor conviction when he refused to resign. Sheriff Mirkarimi was charged with official misconduct by the County on the basis of the misdemeanor conviction, and the matter proceeded to an administrative hearing. The matter proceeded in front of the San Francisco Ethics Commission, which declined to sustain the charge but did recommend his suspension to the San Francisco Board of Supervisors. On October 9, 2012, the San Francisco Board of Supervisors declined to sustain the suspension, and Sheriff Mirkarimi was reinstated as Sheriff.

According to your facts, the Ross Mirkarimi Legal Defense Fund was established in order to defray the legal defense costs of Sheriff Mirkarimi. Funds are solicited by way of a website, email and phone. "Checks and credit cards are accepted up to \$420 gift limit per calendar year under FPPC guidance." (See email dated February 1, 2013.) You also stated that "supporters sent monetary gifts that were specific to [his] legal defense and those monies were applied to Mr. Mirkarimi's legal bills." (See email dated February 14, 2013.) During 2012, the "amount of gift contributions total[ed] \$27,862." (See email dated February 1, 2013.)

ANALYSIS

A "gift" is defined as a payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. (Section 82028.) The Act regulates the receipt of gifts by public officials such as the Sheriff in two important ways relevant to the current situation: 1) certain state and local officials, including Sheriff Mirkarimi, are prohibited from accepting gifts from any single source in any calendar year with a total value of more than the gift limit. (Section 89503(a).) The current gift limit, which is adjusted

² These facts are drawn from your emails to the Commission dated February 1, 2013, February 14, 2013, March 6, 2012 and your letter to the Commission dated March 13, 2013.

³ On January 8, 2012, Sheriff Mirkarimi was sworn in as Sheriff. At the time of the alleged incident, he was a member of the San Francisco Board of Supervisors.

biennially each odd number year to reflect changes in the Consumer Price Index, is \$440;⁴ and 2) the Act imposes reporting obligations requiring certain public officials to disclose the source of any gifts aggregating \$50 or more in value so that the public is made aware of any potential undue influences from donors who make gifts. (Regulation 18940(d).)

According to your facts, the Ross Mirkarimi Legal Defense Fund was established in 2012 to help offset legal defense costs of Sheriff Mirkarimi. The funds raised are considered gifts to Sheriff Mirkarimi because they conferred a personal benefit on him to the extent that he did not provide consideration of equal or greater value in return. We note that in compliance with the Act, donations were capped at \$420. In further compliance with the Act, as mentioned above, Sheriff Mirkarimi must disclose the source of any gifts aggregating \$50 or more on his annual SEI.⁵

You also ask whether the Act's legal defense funds provisions (Regulation 18530.45) for local officials might apply to the funds you have raised under the gift limits. These provisions do not apply because the limitations in paragraph (i)(2) of the regulation state that a "candidate or officer may only raise funds under this regulation for defense against a civil or criminal proceeding, or for defense against a government agency's administrative enforcement proceeding arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties." Where, as here, the underlying conduct occurred prior to the time Mr. Mirkarimi became Sheriff and does not appear to be related to the performance of his official duties as Sheriff, Regulation 18530.45, by its own terms, does not apply.⁶

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Jack Woodside
Senior Counsel, Legal Division

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⁴ See Section 89503(f). Please note, however, that in 2011 and 2012 the gift limit was \$420.00, consistent with the monetary limitation you had in place.

⁵ This advice is based on the assumption Sheriff Mirkarimi is required to provide full disclosure of all sources and gifts under his agency's conflict-of-interest code.

⁶ You stated Sheriff Mirkarimi's legal defense fund was established in 2012 and raised \$27,862 during the same year. We do not provide advice on issues relating to past conduct. However, to the extent your inquiry relates to future funds raised for Sheriff Mirkarimi's legal defense costs, the foregoing analysis applies.